

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN VILLAFANE MARTINEZ,

Defendant-Appellant.

UNPUBLISHED

July 22, 2008

No. 270187

Kent Circuit Court

LC No. 04-005169-FC

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted a circuit court order denying his request for the appointment of appellate counsel to challenge his plea-based 2004 conviction. We reverse and remand for the appointment of counsel.

Pursuant to a plea agreement, defendant pleaded guilty to one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a). On September 9, 2004, he was sentenced to a prison term of 12 to 40 years.

On June 23, 2005, the United States Supreme Court decided *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005), in which it held that this Court's review of an application for leave to appeal following a plea of guilty or nolo contendere constitutes first-tier appellate review, and that the denial of a request for counsel for indigent defendants seeking that first-tier appellate review violates their rights to due process and equal protection.

Relying on *Halbert*, defendant requested the appointment of appellate counsel on January 5, 2006. The trial court denied defendant's request on January 19, 2006, without specifying a reason for the denial.

On appeal, defendant correctly argues that the denial of his request for counsel may not be justified on the basis that he waived the right to appointed counsel when he pleaded guilty. This Court considered and rejected that position in *People v James*, 272 Mich App 182, 195; 725 NW2d 71 (2006), explaining that the defendant "did not waive his right because there was not a recognized right that he could elect to forego."

Inasmuch as the trial court did not offer a basis for denying defendant's request, and because we have not been presented with any basis for distinguishing this case from *Halbert* or

James, supra, we remand for a determination whether defendant is indigent, and if so, for the appointment of counsel in light of *Halbert, supra*. Appointed counsel may file an application for leave to appeal with this Court or any appropriate post-conviction motions in the trial court, within the time periods in effect at the time defendant was denied counsel as measured from the date of the circuit court order appointing counsel. See *People v Corn*, 477 Mich 903; 722 NW2d 869 (2006).

We reverse and remand. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering